

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

BBX CAPITAL CORPORATION,

CASE NO:

Plaintiff,

vs.

MOD SUPER FAST PIZZA, LLC;
MOD SUPER FAST PIZZA FRANCHISING,
LLC,

Defendants.

COMPLAINT

Plaintiff, BBX Capital Corporation (“BBX Capital”), sues Defendants, MOD Super Fast Pizza, LLC (“MOD Pizza”) and MOD Super Fast Pizza Franchising, LLC (“MOD Pizza Franchising”), and alleges:

PARTIES, JURISDICTION, AND VENUE

1. BBX Capital is a Florida corporation having its principal place of business in Fort Lauderdale, Florida.
2. MOD Pizza is a Delaware corporation having its principal place of business in Bellevue, WA.
3. MOD Pizza Franchising is a Delaware corporation having its principal place of business in Bellevue, WA.
4. This Court has diversity subject-matter jurisdiction over this action pursuant to 28 U.S.C. §1332, as there is diversity among the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.
5. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because this is the

judicial district in which a substantial part of the events giving rise to the claims asserted herein occurred and pursuant to section 8.6 of the Asset Purchase Agreement (“Agreement”).

GENERAL ALLEGATIONS

6. On January 11, 2018, Food For Thought Restaurant Groups, LLC (“Food For Thought”) as tenant and Cypress Creek NVH, LLC (“Cypress Creek”) as landlord, entered into that certain Lease Agreement (“Lease”) for the premises more particularly described in the Lease (the “Lutz Location”). A true and correct copy of the Lease is attached hereto as **Exhibit 1**.

7. In connection with the Lease, BBX Capital signed a guaranty, as incorporated and attached as Exhibit “C” to the Lease, under which BBX Capital guaranteed and assumed the obligations of Food For Thought under certain franchise agreements for the restaurants (“Personal Guaranty”).

8. In or about 2019, Food For Thought, MOD Pizza and Cypress Creek entered into that certain Assignment, Assumption and Amendment of Lease (“Assignment”), whereby, Food For Thought assigned to MOD Pizza, and MOD Pizza assumed from Food For Thought, all of Food For Thought’s rights, obligations and interest as tenant under the Lease for the Lutz Location, including, but not limited to, full responsibility for rent payments and compliance with all terms, covenants, and conditions. A true and correct copy of the Assignment is attached hereto as **Exhibit 2**.

9. Pursuant to the terms and conditions of the Assignment, MOD Pizza and/or MOD Pizza Franchising assumed and agreed to pay, perform and discharge, as and when due, all liabilities and obligations arising from and under the Lease for the Lutz Location, including without limitation, payment of rent. *See Exhibit 2 at page 1.*

10. On September 28, 2019, BBX Capital, Food For Thought, MOD Pizza and MOD

Pizza Franchising entered into the Agreement, under which Food For Thought sold and MOD Pizza purchased certain restaurants, as further defined in the Agreement. A true and correct copy of the Agreement is attached hereto as **Exhibit 3**.

11. Pursuant to the terms and conditions of the Agreement, MOD Pizza and/or MOD Pizza Franchising, amongst other things, assumed and agreed to pay, perform and discharge, as and when due, all liabilities and obligations arising from and after the Effective Time under the Real Property Leases and other Assumed Contracts, as further defined in the Agreement. *See* Exhibit 3 at page 3.

12. Subject to the terms and conditions set forth in this Agreement, at the Closing on the Closing Date, Buyer shall assume and agree to pay, perform and discharge, as and when due, all liabilities and obligations (a) arising from and after the Effective Time under (i) the Real Property Leases and other Assumed Contracts; and (ii) the Permits that are transferred to Buyer, if any, and (b) to pay the amount owed for the Construction Escrow, as defined in the Assignment, Assumption and Amendment of Lease dated as of or about the Closing Date by and among Buyer, Seller and the landlord for the Vineland Point Restaurant (the "Vineland Point Construction Payment" and, together with the liabilities and obligations in (a), collectively, the "Assumed Liabilities").

13. The Assignment is a valid, unambiguous, and enforceable contract.

14. The Agreement is a valid, unambiguous, and enforceable contract.

15. All conditions precedent to bringing this action have been performed, excused, and/or waived.

16. BBX Capital has retained Kopelowitz Ostrow Ferguson Weiselberg Gilbert to represent it in this litigation and has agreed to pay attorney's fees and costs for the services

provided. Pursuant to the Agreement, BBX Capital is entitled to recover its reasonable attorney's fees and costs for the prosecution of this action.

COUNT I
BREACH OF CONTRACT AND CLAIM FOR INDEMNIFICATION

17. Plaintiff restates and realleges its allegations in paragraphs 1 through 16 above.

18. This is a claim for breach of contract damages for MOD Pizza and MOD Pizza Franchising's breach of the Assignment and Agreement.

19. Paragraph 2 of the Assignment obligated MOD Pizza for the payment of rent and for the due performance of all the terms, covenants and conditions of Food For Thought pursuant to the Lease.

20. MOD Pizza breached Paragraph 2 of the Assignment by failing to remit payment to Cypress Creek on behalf of Food For Thought and BBX Capital, pursuant to the terms of the Lease and Assignment.

21. In addition to MOD Pizza's obligation to remit payment of the rent to Cypress Creek on behalf of BBX Capital, pursuant to Section 7.3 and 7.4 of the Agreement, MOD Pizza and/or MOD Pizza Franchising are obligated to indemnify and hold BBX Capital, its affiliates, and their respective owners, directors, managers, officers, employees, agents and representatives harmless from and against all claims, judgments, damages, liabilities, settlements, awards, losses, diminutions in value, injuries, reparations, deficiencies, costs and expenses, mediation, arbitration or litigation, including reasonable attorneys' fees (collectively, "Damages"), directly or indirectly arising out of or due to MOD Pizza or MOD Pizza Franchising's failure to comply with its obligations under the Lease for the Lutz Location, including, without limitation, the failure to pay rent when due and owing.

22. On February 27, 2025, BBX Capital sent a demand for indemnification ("Demand

Letter”) to MOD Pizza and MOD Pizza Franchising demanding that MOD Pizza and/or MOD Pizza Franchising immediately remit full payment of the amounts due to Cypress Creek, along with any other outstanding amounts owed for the Lutz Location. A true and correct copy of the Demand Letter is attached hereto as **Exhibit 4**.

23. The Demand Letter further served as BBX Capital’s formal indemnification demand to MOD Pizza and/or MOD Pizza Franchising pursuant to Sections 7.3 and 7.4 of the Agreement.

24. MOD Pizza and MOD Pizza Franchising failed to comply with the Demand Letter and on April 17, 2025, BBX Capital sent a second demand for indemnification (“Second Demand Letter”) to MOD Pizza and MOD Pizza Franchising. A true and correct copy of the Second Demand Letter is attached hereto as **Exhibit 5**.

25. To date, MOD Pizza and MOD Pizza Franchising have failed and/or refused to comply with the Demand Letter and the Second Demand Letter.

26. As a result of MOD Pizza and/or MOD Pizza Franchising’s breach of the Assignment and Agreement, BBX Capital sustained damages for which MOD Pizza and/or MOD Pizza Franchising are liable.

WHEREFORE, BBX Capital Corporation requests a non-jury trial on all claims so triable and judgment against MOD Super Fast Pizza, LLC and/or MOD Super Fast Pizza Franchising, LLC in the total amount of all damages MOD Super Fast Pizza, LLC and/or MOD Super Fast Pizza Franchising, LLC have caused by the breaches of the Assignment and Agreement, plus prejudgment and post-judgment interest, attorney’s fees, costs, and all other relief the Court deems just and proper.

Dated this 19th day of June, 2025.

Respectfully submitted,

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